



# *Jena Band of Choctaw Indians*

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March 15, 2018

Secretary Marlene Dortch  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

Re: Jena Band of Choctaw Indians' Tribal Historic Preservation Officer's Comments and Opposition to Second Report and Order (WT-17-79)

Dear Chairman Pai and the Commission:

The Second Report and Order, in reference to WT 17-79, was released on March 1, 2018. Only fourteen (14) days later, I offer these comments, respectfully.

This 80 page document diminishes the role of Tribes and the Section 106 process, under the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA), which are the mechanisms Tribes use to protect and preserve our Cultural Resources, which, once desecrated, can never be returned to their original state. The Federal Communications Commission (FCC) has a legal obligation to consult with Tribes, recognizing that we are sovereign nations and that Tribes have a legal right to protect their sacred and culturally significant sites in a way that is suitable and acceptable to each nation, individually. Having only two weeks to comment on this crucial document is a direct attack to Tribal Sovereignty, as this document contains issues that have never been discussed or consulted upon with Tribes.

The Tower Construction Notification System (TCNS) has been successful in our participation in the Section 106 process with the wireless industry. We maintain that we are compliant in our responses. The fee that we charge employs an individual to conduct the proper research to complete expedited reviews of projects in the TCNS. Our fee includes office space, paper and printing costs, costs associated with employing the researcher, accounting, administration, etc. Our fee has not changed since November 2014, when I became the Jena Band of Choctaw Indians' THPO, interim and then permanent. We reiterate that a few Tribes and a few instances of bad actors have been brought forth by the wireless industry where fees and lack of timely response are an issue; however, the TCNS has proven to be a

successful and beneficial tool used by the Jena Band of Choctaw Indians to protect Cultural Resources within our ancestral homelands.

We formally disagree with the FCC's statement that formal government to government consultation has occurred. The Jena Band of Choctaw Indians is listed several times in the Second Report and Order as being present at "Tribal Consultations." The views of the Jena Band of Choctaw Indians have not been taken into consideration in the Second Report and Order, which is a key component in the definition of tribal consultation.

I was present, for example, at the Annual NATHPO meeting in Pala, California in August of 2017, Mr. Everett Bandy of the Quapaw Tribe, asked specifically if the meeting with FCC representatives was Tribal Consultation under Executive Order 13175, and the FCC representatives answered no. Yet, this meeting was referenced as part of the "Tribal Consultation" record in the Second Report and Order (paragraph 23). The meeting is listed as a "two-day dialogue (not Tribal Consultation) session."

In paragraph 24, Chairman Pai visited the Navajo Nation in August of 2017. There was little notice given to Tribes to be able to attend. A majority of the meeting's discussion focused on the need for broadband on reservations, along with electronic health records. Little discussion took place regarding changes to the Section 106 process. There was no agenda and no facilitator to ensure that every Tribe had their time to make comments to Chairman Pai. Time ran out and Jena Band of Choctaw Indians' Chief B. Cheryl Smith was unable to give the Jena Band of Choctaw Indians' formal comments, yet this meeting was referenced as part of the "Tribal Consultation" record in the Second Report and Order (paragraph 24).

Paragraph 29 discusses a conference call on February 5, 2018, and lists the Jena Band of Choctaw Indians' being part of a consultation, yet I and nearly every Tribe that made comments that day said that the conference call should not be considered "Tribal Consultation." The February 5 call is also the first time that Tribes were made aware of the fact that competition for consultants to perform Section 106 reviews and research (Paragraph 120) and changing the definition of a federal undertaking were being considered by the FCC. Tribes were not made aware of these possible changes since the release of the Notice of Proposed Rulemaking (NPRM), yet the Commission will vote on March 22, 2018, on issues that could have detrimental impacts to Tribes, whose views have been neglected and disregarded.

The USET meeting held in Washington, DC, in February of 2018, left Chief Smith, Jena Band of Choctaw Indians, upset due to the fact that the USET Board of Directors was given no notice that Commissioner Carr would be addressing the board and therefore leaving her unprepared to make formal comments (paragraph 30).

The record needs to be corrected, where it references Tribal Consultation, as it has not occurred with the Jena Band of Choctaw Indians to date. Listening sessions, briefings, and one sided dialogues are not considered Tribal Consultation to the Jena Band of Choctaw Indians. We had requested a government to government consultation for the four federally recognized Tribes in Louisiana when Chief Smith returned from the February 2018 USET meeting, which was prior to the issuance of the Second Report and Order. Sadly, the vote of the Commission will occur before we ever get to consult on a government to government basis, as the Louisiana Tribes' government to government consultation has been set for March 26, 2018. Our comments and views on the Second Report and Order, again, will be disregarded in the decision making process.



Paragraph 98 references the Form 620/621 as being the only requirement by applicants, which infringes on the sovereignty of each Tribe to design their own consultation process, which is not a "one size fits all" process.

Paragraph 112 states that the Tribes simply give their views, which undermines the fact that the Tribes have knowledge of their sacred and culturally significant properties that the general population does not possess. We also research and make a determination of effect on historic, sacred and culturally significant properties, as SHPO's do. Our determinations are not views, but are thought out, researched determinations of effect. Should a project had an adverse effect, I, personally in my capacity as THPO, will ask for the project to be moved to a different location or, if effect cannot be avoided, I ask for Phase II or Phase III archaeological surveys to occur.

In closing, the Jena Band of Choctaw Indians wishes to engage in formal government to government consultation prior to changes to legal Tribal involvement in the Section 106 process, coordinated by the FCC. The views of the Jena Band of Choctaw Indians, as a federally recognized Indian Tribe and sovereign nation, have not been considered in the Second Report and Order, which is heavily swayed and discusses financial benefit to the wireless industry and not the legal obligations under the National Historic Preservation Act. The Tribe opposes the adoption of the policies set forth in the Second Report and Order and sincerely hopes that the FCC does not enact the policies within the document, without proper consultation and consideration of the trust responsibility of the FCC to Tribes, not to the wireless industry. We strongly oppose changing the definition of an undertaking, completely excluding small cell technology without fully knowing the effects to historic properties and Cultural Resources within the Second Report and Order, without proper Congressional action.

Sincerely,



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